IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1247 OF 2006

Shri.Pravin Dave ..Petitioner

Vs.

State of Maharashtra
and Ors. ..Respondents

....

Mr.A.R.Shaikh Advocate for Petitioner
Mr.K.R.Belosey AGP for Respondent No.1
Ms.A.K.Sawla Advocate for Respondent No.2

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CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : JULY 24,2006

P.C.:

1. Heard the learned counsel for the petitioner and Respondents. Rule. By consent, rule is heard forthwith.

2. This petition filed under Article 226 of the Constitution of India, assails the order dated 27th March, 2006 passed by the Deputy Collector and Competent Authority (ULC) Greater Mumbai. By the said letter, the petitioner-Proprietor of Vasundhara Builders and Developers has been called

upon to surrender 23 tenements.

3. Brief facts leading to the impugned letter are that there were three plots of land situated at Survey No.50/2, 4, 5, Survey No.191/10, 13, 51 Hissa No.5, and Survey No.324A/3/4 all situated at Eksar Village, Borivali (W), Mumbai. In respect of the said plots of land, exemption orders under Section 21 of the Urban Land Ceiling Act came to be issued by Respondent No.1. The developer of the said property was M/s.Sahayog Development Corporation through its partner Shri.R.N.Kshirsagar. The said plots were divided into three schemes i.e. Scheme No.21/SR/2/203, 21/SR/2/206 and 21/SR/2/169. Pursuant to the said exemption order, the landlord/developer were supposed to construct the building and out of total FSI area available on the said plot of land, 10% of the built up area is required to be surrendered to the Government for its nominees.

4. As far as the Scheme relating to 21/SR/2/169 is concerned, six flats were to be surrendered to the Government. In respect of Scheme No.21/SR/2/203, 11 flats and in respect of Scheme No.21/SR/2/206, 6

flats were to be surrendered to the Government. Borivali Sangam Sahakari Society had taken over the said Housing project under the exemption order. The Government sanctioned and permitted the society to start construction of a building pursuant to the said exemption order dated 7.7.1979. On 23.9.1979 Shri.Kshirsagar by agreement with Borivali Sangam Co-Operative Housing Society (Proposed) transferred the housing scheme No.21/SR/2/169. However, for a period of ten years no construction could be started. On 24.11.1988, the society by an agreement had given development of the said project to the petitioner. The petitioner obtained an order from Respondent No.1 whereby the time for completion was extended for three years upto 23.11.2001.

5. By letter dated 30.6.2001, Respondent No.1 informed the society that pursuant to the exemption order dated 7.7.1979, the society was supposed to hand over six flats out of the said scheme i.e. 21/SR/2/169. In March, 2005, the petitioner and the society completed building no.1 consisting of A & B Wings having total number of 60 flats. It is an admitted fact that the petitioner surrendered to

the Government three flats from Wing ‘A’. In the meantime, the petitioner also got I.O.D. in respect of building No.2 of the said project and started construction work. However, on 27.6.2005, the petitioner’s architect received a communication from Respondent No.1 Corporation that Corporation had received letter dated 11.5.2005 from Respondent No.1 showing that developer had given indemnity bond to their office for 23 flats to be handed over to the Government and in the approved plan, only six flats were shown to be handed over to the Government. Hence, as per the direction of Respondent No.1, Respondent No.2 asked for fresh NOC from ULC authorities and until then no further development would be allowed.

6. On 11.5.2005, the petitioner received a notice from Respondent NO.1 in which there is mention of the three different exemption orders i.e. order No.21/SR/2/203, 21/SR/2/206 and 21/SR/2/169. This letter was addressed to Shri.R.N.Kshirsagar of Sahayog Development Corporation. By this Notice, Respondent No.1 has stated that in these three schemes, 23 flats were required to be surrendered to the Government, out of these three flats were

already surrendered to the Government and 20 flats are yet to be surrendered to the Government. It is mentioned that unless 20 flats are surrendered, NOC for Occupation Certificate, will not be issued. Pursuant to the said notice dated 11.5.2005, the petitioner attended office of Respondent No.1 and informed that he was not concerned with the first two Schemes i.e. Scheme No.21/SR/2/203 and 21/SR/2/206 and that he is only concerned with Scheme No.21/SR/2/169 and in respect of the Scheme No.21/SR/2/169, he has also surrendered three flats and he will surrender balance three flats on completion of 'B' Wing. However, again petitioner received a notice that unless 20 flats are surrendered to the Government, no permission for further construction will be granted and ultimately, the order dated 27.3.2006 came to be passed by Respondent No.1 against the petitioner. As the 23 flats were not surrendered, six flats of the petitioner in Building No.2 came to be sealed and the petitioner was told that the further construction would be stopped.

7. It is seen that originally Shri.R.N.Kshirsagar was the developer of all the three Schemes

including Scheme No.21/SR/2/169. However, as the construction of the building was not started within a period of one year, extension was sought and the Government granted extension to the society to start construction work of the building. Though the said permission was granted on 23.11.1987, however, for a period of 10 years, no construction took place. Thereafter, on 24.11.1998 the society by an Agreement had given the development of the project of Scheme No.SR/21/2/169 to the petitioner. Thereafter, the petitioner commenced the construction after following all necessary procedure. Thus, it is seen that petitioner was only associated with scheme No.SR/21/2/169. It is an admitted fact that in respect of the said scheme, only six flats had to be surrendered to the Government. It is also an admitted fact that petitioner has handed over three flats and is ready and willing to hand over the remaining three flats.

8. As far as other two schemes i.e. 21/SR/2/203 and 21/SR/2/206 are concerned, the petitioner had not entered into any agreement with the Society or any one else for development of the Schemes. In fact, it was Kshirsagar who was developing the said

schemes. In respect of the remaining two schemes, 17 flats were required to be surrendered to the Government. Thus, it is seen that so far as the petitioner's scheme i.e. 21/SR/2/169 is concerned, it is an independent one and therefore, there cannot be any shifting of liability of the 17 flats of the two different schemes i.e. Scheme Nos.21/SR/2/203 and 21/SR/2/206 on the petitioner. The construction of the remaining two schemes was completed in the year 1982 and as per the exemption order, said M/s.Sahayog Development Corporation was required to surrender 6+11=17 flats to the Government. However, all the 200 flats in the said two schemes, were sold in the open market and no flat was surrendered to the Government as per exemption order. Therefore, in the year 1983 itself, Respondent No.1 started taking steps for recovery of said 17 flats. On 4.4.1984, Respondent No.1 by his Demand Notice intimated to Mr.Kshirsagar that he should comply with the exemption orders of the aforesaid two schemes failing which, action will be taken against him under Section 38(2) of the U.L.C.Act. In the said letter, it was specifically stated that Mr.Kshirsagar had committed breach of the exemption

orders and has cheated and deceived the Government and has obtained clearance from the ULC authority for getting Occupation Certificate from the Corporation in respect of the already constructed building, the flats of which were sold in the open market and he has not surrendered 17 flats to the Government.

9. On 13.11.2000 again in respect of the two schemes i.e. 21/SR/2/203 and 21/SR/2/206, Respondent No.1 issued Demand Notice against the said Kshirsagar of M/s. Sahayog Development Corporation and called upon him to hand over 17 flats out of the said two schemes and also intimated him that he is liable for criminal action. In fact criminal action ultimately came to be taken against Mr.Kshirsagar by lodging FIR vide CR No.204 of 2001 with Borivali Police Station on 19.1.2001 under Section 38(1) of the U.L.C.Act and under Section 420 of IPC. Pursuant to the said FIR, Kshirsagar came to be arrested. The investigation revealed that Kshirsagar had sold all the flats under the said two schemes in open market.

10. In respect of the Demand Notice dated 13.11.2000, by letter dated 17.12.2000 Mr.Kshirsagar intimated to Respondent No.1 that he is unable to surrender 17 flats to the Government from the aforesaid two schemes but he suggested that he has another project at Mankhurd where he will be constructing building of 3 lakh sq. feet FSI and from that project, he will surrender said 17 flats to the Government. Again by Demand Notice dated 17.10.2005, Respondent No.1 ordered Kshirsagar to hand over 17 flats in respect of the two schemes. In the said Notice, it was made clear that if he fails to hand over 17 flats, he will have to pay costs of the flats being Rs.56,23,112/- in respect of scheme No.21/SR/2/206 and Rs.1,18,89,060/- in respect of second scheme i.e. Scheme No.21/SR/2/203. Thus, it is seen that all along from about 1983, the Respondents were making efforts to see that 17 flats were handed over in respect of 21/SR/2/203 and 21/SR/2/206. All these efforts were directed to Kshirsagar. However, all of a sudden, in November, 2005, Respondent No.1 has changed its stand and is trying to shift liability of the said 17 flats of said M/s.Sahayog Development Corporation upon the petitioner’s

project. We have noted earlier that the petitioner's scheme i.e. 21/SR/2/169 is an independent scheme and it has no concern with the other two schemes i.e. Scheme Nos.21/SR/2/203 and 21/SR/2/206. The exemption orders in respect of Scheme Nos. 21/SR/2/203 and 21/SR/2/206 belong to different owners but the developer was common with Shri.R.N.Kshirsagar who was partner of M/s.Sahayog Development Corporation. In respect of petitioner's scheme No.21/SR/2/169 in the year 1978, the developer was also Kshirsagar but on 23.9.1979 itself, Kshirsagar had transferred the development project in favour of Borivali Sangam Co-Operative Housing Society and said society had entered into an Agreement with the petitioner for development of the said project. From 1983 to 2005, it is seen that the Respondents were pursuing the handing over of 17 flats in respect of Scheme Nos.21/SR/2/203 and 21/SR/2/206 with K.N.Kshirsagar, however, suddenly thereafter the petitioner was called upon to hand over 17 flats from his Scheme i.e. 21/SR 2/169 in addition to three flats which he had surrendered and three which he was willing to surrender which came to a total of 23 flats.

11. It is the case of the Respondents that the petitioner had undertaken to hand over 17 flats which was the liability of Kshirsagar. In support of this contention, the Respondents relied upon a letter of one Kirit Kapadia dated 21.1.1995 which is purportedly written on behalf of the Petitioner. In the said letter, it is stated that he is the authorised representative of the Petitioner and the authority letter is annexed to the said letter. Though the Respondents have annexed the letter dated 21.1.1995 to their reply, the Respondents have not annexed the Authority Letter which is said to be given by the Petitioner to Kirit Kapadia. The Respondents produced one letter/authorisation dated 21.11.1994 on the basis of which according to them, Kirit Kapadia was authorised to make the statement on behalf of the petitioner. However, on going through the said letter, we find that the Petitioner has not given any authorisation letter to Kirit Kapadia in respect of handing over the remaining 17 flats. Nothing has been brought to our notice to show that petitioner undertook to take over the liability of Kshirsagar in respect of 17 flats. Moreover, it is seen that though

Kshirsagar agreed to hand over 17 flats from its project at Mankhurd, no steps were taken to recover the 17 flats from Mankhurd Project or the price of the said flats from Kshirsagar and instead, the Respondents are demanding the said 17 flats from the petitioner. There is nothing on record to show that petitioner had at any time undertaken to take over the liability of Kshirsagar in respect of other two schemes.

12. In respect of Scheme No.21/SR/2/169, six flats were to be handed over. The Petitioner has already handed over three flats in Building No.1-A Wing. The said flats Nos. are 1, 2 and 3. The learned counsel for the Petitioner has stated that within two weeks from today, the Petitioner will hand over the keys of the remaining three flats. The said flats are flat No.F-4 in Building No.1-A Wing and Flat No.F-1 and 2 in Building No.1-B Wing. On the remaining three flats being handed over by the Petitioner, the Respondents shall immediately give Clearance Certificate.

13. In view of the above facts and circumstances, the order dated 27th March, 2006 passed by the

Deputy Collector and Competent Authority (ULC) Greater Mumbai deserves to be set aside and is accordingly set aside. Rule is made absolute in terms of prayer clause 30(a), (b) and (c). No order as to costs.

[F.I.REBELLO, J.]

[V.K.TAHILRAMANI,J.]